

I saw in the Radio Currents Magazine the FCC's plan to require radio stations keep recordings of their programming for a limited period of time.

This requirement would be extremely costly for small radio stations. Depending on the length of time the radio stations are required to maintain the tapes, it could result in forcing small stations to obtain additional safe storage facilities. The FCC proposes that this requirement could be met with an inexpensive long playing video cassette recorder. This suggestion seems strange to me. A video cassette recorder with a line in port could record the programming, but it seems like overkill to use a video tape to do the work of a regular cassette recorder with a line in port. I would also question how long the videotapes would remain readable by the videocassette recorder because of the magnetic fields that surround much of the equipment at a radio station. Further, video cassettes are big and bulky. A regular audio cassette would serve the same purpose and require less storage space. In the event that CD writers come down substantially, that would become the preferred method of recording because of the inability to record over the data, unless re-writeable CD's are used.

I do not think this would be an effective deterrent to the use of profanity, obscenities nor indecent language because the station is in control of the record button. It would seem more logical to have the complaintant to record the objectional content and submit it to the FCC.

Furthermore, it is possible that objectionable content cannot be avoided by some stations. Stations that broadcast solely through satellite feeds or that play certain types of music, i.e. rap, could be subjected to the disciplinary actions through no fault of their own. This would result in the censorship of certain types of music or the outlawing of the playing of certain songs, in violation of the artist's and the station's First Amendment rights.

On June 29, 2004, the United States Supreme Court opined in Ashcroft v. American Civil Liberties Union, held that **“The Third Circuit was correct to affirm the District Court's ruling that enforcement of COPA should be enjoined because the statute likely violates the First Amendment.”** This case dealt with the use of identifying information, such as a credit card number, to prevent children from obtaining access to objectional material.

The FCC's proposed rules of decency and requirement that the radio stations be required to keep tapes of all their broadcasts between 6:00 a.m. and 10:00 p.m. should not be adopted without first exploring, that allow for the programming to be blocked at the receiving end rather than at the sending end. The Supreme Court in Ashcroft reasoned:

Filters impose selective restrictions on speech at the receiving end, not universal restrictions at the source. Under a filtering regime, childless adults may gain access to speech they have a right to see without having to identify themselves or provide their credit card information. Even adults with children may obtain access to the same speech on the same terms simply by turning off the filter on their home computers. Promoting filter use does not condemn as criminal any category of speech, and so the potential chilling effect is eliminated, or at least much diminished. Filters, moreover, may well be more effective than COPA. First, the record demonstrates that a filter can prevent minors from seeing all pornography, not just

pornography posted to the Web from America. That COPA does not prevent minors from accessing foreign harmful materials alone makes it possible that filtering software might be more effective in serving Congress' goals. COPA's effectiveness is likely to diminish even further if it is upheld, because providers of the materials covered by the statute simply can move their operations overseas. In addition, the District Court found that verification systems may be subject to evasion and circumvention, *e.g.*, by minors who have their own credit cards. Finally, filters also may be more effective because they can be applied to all forms of Internet communication, including e-mail, not just the World Wide Web. Filtering's superiority to COPA is confirmed by the explicit findings of the Commission on Child Online Protection, which Congress created to evaluate the relative merits of different means of restricting minors' ability to gain access to harmful materials on the Internet.

The similarities between the two mediums are striking. Television could conceivably implement the ruling in Ashcroft based on v-chip technology and the advent of the television ratings system.

Further, it could also be reasoned that a requirement of recording radio broadcasts could violate the station's Fifth Amendment right against self incrimination. Forcing a radio station to provide tapes of its broadcasting effectively forces them to testify against themselves at any complaint hearings.

Another problem with the requirement of a station recording its programming are the copyrights. This could require a radio station to pay even more to comply by being forced to pay its dj's a fees for copying their material, and it could subject them to fines and penalties for recording copyrighted works of other artists and performers.